



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 284-98
3 May 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NeuroSpec ltr of 13 May 98
(3) Dir, NCPB ltr 5420 Ser:99-21, 26 Feb 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was retired by reason of physical disability because of multiple sclerosis (MS).

2. The Board, consisting of Ms. Taylor and Messrs. Swarens and Zsalman reviewed Petitioner's allegations of error and injustice on 8 April 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 20 February 1990. She underwent a pre-separation physical examination on 14 December 1995, and was found qualified for separation. A medical record entry dated 10 January 1996 indicates that she had been "educated" about optic neuritis and MS, and the need for follow-up evaluation by a neuro-ophthalmologist. She was released from active duty on 19 February 1996. According to civilian medical records, Petitioner's vision was "never the same" after the November 1995 episode of optic neuritis; she had difficulty "getting her words out" and with slurred speech during April and May 1996; she had numbness in her right hand for about one month during

the summer of 1996; and she developed pain in the left eye during October 1996. She filed a claim for disability benefits with the Department of Veterans Affairs (VA) on 8 April 1997, and was awarded combined rating of 80% for a number of conditions related to her MS, to include optic neuritis, partial loss of bladder function, speech disturbance, right upper arm weakness, and right lower extremity weakness with vertigo and disequilibrium.

d. On 13 May 1998, the Board was advised by the Neurology Specialty Leader that Petitioner had an episode of optic neuritis in November 1995. Her brain MRI report showed lesions consistent with demyelination. The Specialty Leader recommended that Petitioner's request be granted, as it is clear that the episode of optic neuritis was the initial manifestation of her disease.

e. On 26 February 1999 the Board was advised by the Director, Naval Council of Personnel Boards that he had determined that Petitioner was fit for duty at the time of her release from active duty and therefore does not warrant a medical retirement. He advised that the VA has no requirement to find a veteran unfit for military duty as a prerequisite to the award of a disability rating, and that Petitioner's receipt of a VA rating does not establish that she was unfit for duty in February 1996. He noted that Petitioner remained able to pursue work and scholastic activities uninterrupted until her October 1996 relapse, and thereafter, able to return to normal activities until February 1997, a year after her release from active duty. He noted that his senior medical officer had contacted the Neurology Specialty Leader, and that the latter officer amended her opinion, and now agrees that Petitioner was fit for duty at the time of her release from active duty. He recommended that the petition be denied.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the findings of the Specialty Leader for Neurology and the Director, Naval Council of Personnel Boards, the Board finds that Petitioner should have been retired by reason of physical disability because of multiple sclerosis. In this regard, it notes that MS is a disease which normally is slowly progressive, and that persons who suffer from it may enjoy many years of good health between the onset of symptoms and the date when the individual becomes disabled. In Petitioner's case, the disease was more advanced at the time of her release from active duty than was apparent at that time, and/or progressed much more rapidly than expected. In view of the series of episodes/exacerbations of her MS beginning shortly after her release from active duty, which culminated in substantial disability by February 1997, and resolving doubt in her favor, the Board concludes it would be in the interest of justice to grant her request.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 18 February 1996, while she was entitled to receive basic pay, the Secretary of the Navy found her unfit to perform the duties of her rank by reason of physical disability due to multiple sclerosis, which was

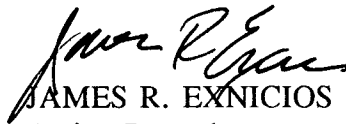
incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability is not combat related; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Veterans Administration at the time the Secretary found Petitioner unfit, Code Number: 8018; and that the disability may be of a permanent nature, accordingly, the Secretary directed that Petitioner be released from active duty on 19 February 1996, and transferred to the Temporary Disability Retired List effective 20 February 1996.

b. That Petitioner be accorded a periodic physical examination as soon as practicable.
Current address: 1717 E. Florida Avenue, #3, Urbana, IL 61802

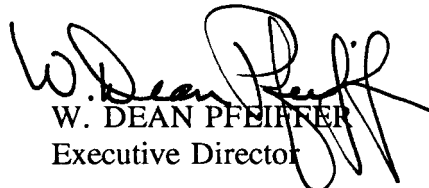
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

approved: JUL 2 1999

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)